IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 868 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA sd/-
and
HON'BLE MR.JUSTICE J.R.VORA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PUNJABHAI M SALAT

Appearance:

1. Criminal Appeal No. 868 of 1986

MR LR PUJARI, A.P.P. for Petitioner No. 1

MR BS SUPEHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 13/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. The Appellant - State of Gujarat has challenged in this Appeal the impugned Judgment and order dated

17.4.1986, passed by the learned Addl. Sessions Judge, Sabarkantha at Himatnagar, in Sessions case No.55 of 1983 whereby he convicted the respondent - accused for the minor offence u/ss. 304 Part-I and 326 I.P.Code and sentenced him to suffer R.I. for 7 years and 5 years respectively and ordered that both the sentences to run concurrently, but acquitted the respondent - accused for the major offence u/s.302 I.P.Code.

2. As per the prosecution case on 12.6.1983 at about 3.00 p.m. the respondent - accused with an intention to cause death of Gangaram Virabhai, caused injury to deceased Gangaram which was in ordinary course of nature sufficient to cause his death and in order to fulfil the said intention the accused inflicted knife blows on deceased Gangaram and caused his death and thereby he committed offence u/s.302 I.P.Code. At the same time and place, with an intention to cause death of Hiraben Gangaram Salat he caused injuries to Hiraben which was in ordinary course of nature sufficient to cause her death by inflicting knife place on her and thereby committed the offence u/s.302 I.P.Code.

3. Brief facts of the prosecution case are as under:-

Gangaram Virabhai Salat was the resident of Dahegam and prior to 15 days of the happening of the incident, he came to Himmatnagar for business. He had two wives. The name of the earlier (old) wife was Hiraben and the name of the new wife was Revaben. His son Anil and son Kisan had also came with him. They were residing in the open land, in a tent, near the R.T.O. Office, Railway Crossing. They were doing the business of preparing the glass toys and flowers. The present accused was also having illicit relationship with the first wife of Gangaram, Hiraben. Before 10 days of this incident, the accused had eloped with Hiraben and returned back after three days. In this connection, the people of the community used to talk about this. On 12.3.1983, Gangaram, his wife Revaben, Hiraben and both the sons were sitting in their 'dera' (tent). At that time, at about 3.00 p.m. the accused came there. Along with his, his wife had also come there. As regards the illicit relationship, she picked up quarrel with Gangaram. Thereafter, the wife of the accused suddenly got excited and he stated to Gangaram, why are you taking (involving) my name and on saying this, when he took out knife from his waist and tried to inflict on Gangaram, Hiraben intervened, therefore, he inflicted one blow of knife on abdomen of Hiraben, and as a result thereof

Hiraben fell down. Thereafter, when Gangaram attempted to catch hold of the accused, the accused inflicted one knife blow on his chest, and as a result thereof, he also fell down. Revaben and two sons of the deceased raised shouts and the accused fled from the said place. Mean time, Rama Kheta came there and he removed both the injured to the Civil Hospital. The Doctor declared Gangaram to have died. Thereafter, Revaben went to Himatnagar Police Station and lodged the complaint of this incident. Hiraben was referred to Civil Hospital, Ahmedabad for further treatment, where the doctor operated upon her and given treatment, but after three days, she died.

On the basis of the complaint lodged by Revaben, P.S.I. Shri Gangabhai Kalabhai Desai, of Himatnagar Town Police Station, started investigation into the offence. He made the inquest panchnama of the dead body of Gangaram and has sent the said dead body for Post mortem. He recorded the statement of injured Hiraben. He had also recorded the statements of Ramabhai Khetabhai, Anil Gangaram, etc. The accused was then found out and arrested after drawing the Panchnama of his body condition. The accused had lodged N.C.complaint. He was sent to the Hospital for treatment of the injuries sustained by him. On 13.6.1983 the panchnama of place of incident was drawn and the blood-stained earth was taken from there. On the basis of the statement made by the accused, the knife which was hidden in the ground-land behind his house, was found out and upon following the due procedure, the same came to be taken in custody. The police Station Officer had taken custody of the clothes of the deceased under a panchnama. P.S.I. Shri Desai had sent the muddamal articles so recovered to the Forensic Science Laboratory, under the forwarding letter and called for the report. Since this offence occurred within the limits of railway police Station, the investigation of this offence was entrusted on the railway police Officer on 15.6.1983. P.S.I. Shri Motilal Sevaram had taken over the investigation and after verifying the investigation conducted by P.S.I. Shri Desai, he filed charge-sheet against the accused in the Court of learned Chief Judicial Magistrate, Himatnagar, for the offence u/s.302 I.P.Code. This case was triable by the Court of Sessions and, therefore, on 25th November, 1983, he committed it to the Sessions Court.

4. After committing the case to the Sessions Court, since the accused was involved in the offence being CR No.I/84 of the Dungarpur Railway Station, for the offence

u/s.302 of the I.P.Code, the Rajasthan Police had arrested him in connection with the said offence and took him to the Ajmer Central Jail, and inspite of making frequent request by the Court, he was not sent there. The Court of learned Additional Sessions Judge, Ajmer had refused to send the accused back till the case was over. Thereafter, many a times, letters were addressed to complete the case as early as possible and to send the accused back and even the transfer warrant was also sent. At least on 14.3.1986, the accused was produced before the Court. At that time, the charge Exh.16 was framed against the accused. The accused denied to have committed the offence. Thereafter, on behalf of the prosecution, the following witnesses were examined.

(1) Revaben Gangaram, Exh.24;
(2) Rama Kheta Salat, Exh.26;
(3) Madansinh Jugalkishor Thakkar, Exh.27;
(4) Mohanlal Sundardas, Exh.31;
(5) Dr.Dilipkumar Savajibhai Ansari, Ex.36;
(6) Babulal Chimanlal Mistry, Ex.38;
(7) Manilal Karsanbhai Patel, Exh.40;
(8) Dr.Jashbhai Galabhai Vaghela, Exh.45;
(9) Gandabhai Kalabhai Desai, Exh.49;
(10) Motilal Sevaram, Ex.56;
(11) Dr.Deven Govindbhai Desai, Exh.57;
(12) Anil Gangaram, Ex.61;

The accused in his statement u/s.313 Cr.P.C. claimed that prior to the incident he and Hiraben had gone out of station for business purpose. According to him, the evidence of some of the prosecution witnesses is false and regarding remaining evidence he had to say nothing. He has also filed written statement Ex.65 contending that on the day of incident Revaben came to his house and invited him for a liquor party. Therefore, he had gone to the house of his friend Gangaram and all of them i.e. he (accused), Gangaram, Revaben and Hiraben had liquor. Because of having more liquor Gangaram started speaking in an intoxicated state of mind. Hiraben also, in an intoxicated state of mind, started speaking out about she going with the accused for labour work. Thereupon Gangaram suspected the character of Hiraben and scolded her and then gave slap to the accused. In retaliation the accused also gave one slap to Gangaram. Thereupon Gangaram took out the knife lying in the tent and attempted to inflict blow on the accused. Hiraben ran after him with Axe. In the scuffle Hiraben received knife injury from Gangaram and because of that she fell down. Thereafter, Gangaram chased the accused and had scuffled with him. During that scuffle knife

fell down from the hands of Gangaram and Gangaram received injury on his chest by falling on the knife. Thus, according to the accused he did not cause any injury with knife either to Hiraben or Gangaram. In support of his defence he has not examined any witnesses.

5. The learned trial Judge, after considering, oral as well as documentary, evidence led by the prosecution and the defence of the accused, came to the conclusion that the prosecution proved its case against the respondent - accused that on 12.6.1983 at about 3.00 p.m. the accused inflicted blows on Hiraben and Gangaram and caused serious injuries to them and because of that Gangaram died. However, he held that the prosecution failed to prove that Hiraben died due to the injuries caused by the accused and according to him the prosecution has failed to prove that the accused had committed major offence u/s.302 I.P.Code and found the respondent - accused guilty for the lesser offence u/s.304, Part-I I.P.Code and Section 326 I.P.Code.

6. It may be stated that the jail record of the respondent - accused shows that after conviction and order of sentence passed by the learned trial Judge for the offence u/s.304, Part-I I.P.Code and Section 326 I.P.Code the accused has already under-gone the sentence of 7 years and already released from jail on 30.5.1998 as he had not challenged the impugned judgment and order of conviction & sentence passed by the learned trial Judge. Therefore, we are left with the present acquittal appeal for the major offence u/s.302 I.P.Code only.

7. Learned A.P.P. Shri Pujari has taken us through the Judgment and order of acquittal passed by the learned trial Judge acquitting the respondent - accused for the major offence u/s.302 I.P.Code. But, he was unable to press the Appeal against the order of acquittal passed by the learned Judge in view of the reasoning assigned by him, more particularly Para : 20 of the Judgment. The learned Judge found that the accused had gone with knife to the house of the accused, but he had never made use of it till altercation took place between the deceased and him and he had not taken any undue advantage of the situation. Hiraben received injuries because she tried to intervene when the accused attempted to give knife blow to Gangaram. It is also a fact that he has only given one blow to Hiraben and Gangaram. It is clear from the evidence of the prosecution itself that the case falls under Exception 4 of Section 300 I.P.Code. Therefore, relying upon the Judgment of this Court in the case of STATE OF GUJARAT v/s. AHRI VISA RAVAT &

ORS.reported in 26(1) GLR 574, the learned Judge convicted the respondent - accused for the lesser offence u/s.304, Part-I and not for the major offence u/s.302 I.P.Code.

8. Having carefully gone through the evidence of the prosecution witnesses and the aforesaid reasoning of the learned Judge for acquitting the respondent - accused for the major offence u/s.302, we are of the considered opinion that the learned trial Judge has not committed any error which calls for interference by this Court in this acquittal Appeal after more than two decades of the incident, as the incident had taken place way back on 12.6.1983.

In view of the above discussion, this Appeal fail and is hereby dismissed.

sd/-
(B.J.Shethna, J.)

Date : January 13, 2004 sd/-
(J. R. Vora, J.)

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